

**AMENDMENT NO. 2 TO
COOPERATIVE AGREEMENT 93-051
BETWEEN THE
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF UPLAND**

This Amendment No. 2 to Cooperative Agreement No. 93-051 is hereby made and entered into and effective this 6th day of July, 2022, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA) and the CITY OF UPLAND (CITY) with regard to the management of jointly owned property at the Upland Metrolink Station.

WHEREAS, under SANBAG Contract No. 93-051, dated March 8, 1993, SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG) and the CITY entered into an agreement (Cooperative Agreement) for the design, construction, maintenance, and security of a commuter rail station (Station) south of East A Street between 2nd Avenue and 6th Avenue; and

WHEREAS, SANBAG and the CITY amended the Cooperative Agreement by Amendment No. 1 on January 10, 2001, to specify and clarify certain responsibilities and obligations of the parties, including the provision of a mechanism for the CITY to provide lease administration services; and

WHEREAS, on January 1, 2017, SBCTA became the successor agency to SANBAG pursuant to California Public Utilities Code Section 130800 et. seq., also known as the San Bernardino County Transportation Authority Consolidation Act of 2017; and

WHEREAS, SBCTA and CITY (collectively PARTIES and individually PARTY) desire to further amend the aforesaid Cooperative Agreement to clarify the responsibility of the PARTIES with respect to the insurance of assets under the Cooperative Agreement and the apportionment of costs for said insurance.

NOW THEREFORE, the PARTIES hereto do mutually agree to amend the Cooperative Agreement as follows:

1. The recitals above are true and correct and are hereby incorporated herein by this reference.
2. Except as specifically amended by this Amendment No. 2, all other provisions of the Cooperative Agreement, as amended by Amendment No. 1, shall remain in full force and effect.

3. All references in the Cooperative Agreement to SAN BERNARDINO ASSOCIATED GOVERNMENTS or SANBAG shall mean SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA).

4. Section 1.01.h is ADDED as follows:

Section 1.01.h “Operating hours” shall mean the time period each day starting from thirty (30) minutes before the arrival of the first passenger train of the day operated by SCRRA and ending thirty (30) minutes after the departure of the last passenger train of the day operated by SCRRA.

5. Article V, Section 5.04 Reservation of Commuter Rail Parking is DELETED in its entirety and REPLACED as follows:

Section 5.04 Reservation of Commuter Rail Parking. CITY shall perform appropriate planning, zoning, and permit activities to ensure that not less than two hundred twenty-seven (227) parking spaces located upon the station site are reserved exclusively for rail commuters during Operating hours.

6. Article V, Section 5.07 Administration of Leases is DELETED in its entirety and REPLACED as follows:

Section 5.07 Administration of Leases. CITY shall administer all leases (existing and future) for use of the non-operating property. Such administration of leases shall include, but not be limited to: screening and selecting tenants; entering into or amending any lease for the use of the non-operating property; approving tenant modifications and/or improvements; determining, collecting, depositing and disbursing rents, charges, fees, and/or deposits of any other amount receivable with respect to the occupancy of the non-operating property; terminating tenancies; commencing evictions, executing notices to vacate, and initiating judicial proceedings to effect such actions (the “Lease Administration Services”). CITY shall carry out the Lease Administration Services in a good faith and reasonable manner. CITY shall provide SBCTA with justification for each proposed action prior to amending a lease, entering into a new lease, or approving tenant modifications or improvements. CITY shall provide SBCTA staff with a copy of all amended or new leases or plans for tenant modifications or improvements approved by CITY. Notwithstanding anything to the contrary, CITY shall not make any Lease Administration Services approval which would result in an encroachment upon the station platform areas, reduce the number of parking spaces reserved exclusively for rail commuters during operating hours below the requirement set forth in Section 5.04, or increase the average distance of said reserved parking spaces from the station platform areas, without prior approval from SBCTA’s Board of Directors.

7. ADD Article V, Section 5.09 CITY Provided Insurance:

Section 5.09 CITY Provided Insurance. CITY shall obtain and maintain property insurance covering the non-operating property. Such insurance must be in such

types and amounts as are or should be reasonably and typically maintained from time to time by CITY for other property owned by CITY, provided that, in any event, CITY shall provide SBCTA with an endorsement naming SBCTA as an additional insured. In the event of any damage to the non-operating property, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using proceeds of such insurance to repair such damage. The CITY shall reimburse SBCTA for fifty percent (50%) of the cost of property insurance provided by SBCTA under Section 6.09 one fiscal year in the arrears.

8. ADD Article VI, Section 6.09 SBCTA Provided Insurance:

Section 6.09 SBCTA Provided Insurance. SBCTA shall obtain and maintain real property insurance covering the Station Platforms and the canopies in amounts as are or should be reasonably and typically maintained from time to time by SBCTA for other real and personal property owned by SBCTA, provided that SBCTA shall provide CITY with an endorsement naming CITY as an additional insured on all such policies. In the event of any damage to the Station Platforms or canopies, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using the proceeds of such insurance to repair such damage. Each fiscal year SBCTA shall notify the CITY of the cost of insurance described in this Section 6.09 in the then current fiscal year no later than January 31st of each fiscal year and shall invoice the CITY for reimbursement of fifty percent (50%) of the cost of the insurance provided under this Section 6.09.

9. Article IX, Section 9.01 Distribution of Lease Revenue is DELETED in its entirety and REPLACED as follows:

Section 9.01 Distribution to Parties. All proceeds that may accrue to the PARTIES under this Agreement shall be distributed to the PARTIES hereto in equal shares, except for any parking fees, which shall remain the sole property of the CITY as described in Section 5.05.

10. ADD Article IX, Section 9.02 Distribution of Lease Revenues:

Section 9.02 Distribution of Lease Revenues. CITY shall retain 3% of all gross lease revenues as its property management fee for the Administration of Leases defined in Section 5.07. The 3% property management fee shall first be deducted from the gross lease revenues and the balance of the gross revenues shall be used to reimburse the PARTIES for all expenses associated with the operations of the STATION and/or any leases pursuant to this Agreement, including but not limited to utilities, security and maintenance and property insurance described in Article V and Article VI. Any lease revenue generated in given fiscal year remaining after all reimbursements have been paid shall be distributed to the CITY and

SBCTA in equal shares in the following fiscal year. If there is insufficient lease revenue in a given fiscal year after the CITY retains 3% of the gross lease revenue and has applied parking fees collected pursuant to Section 5.05 towards defraying the costs described in Section 5.05, to cover all reimbursable expenses from that year, then the outstanding reimbursable expenses shall be reimbursed in direct proportion of the revenue generated to the total reimbursable expense outstanding. For example, if in a given fiscal year, after the CITY has retained 3% of all gross lease revenues, the remaining revenues are enough to cover only eighty percent (80%) of the total reimbursable expenses then each PARTY shall be reimbursed eighty percent (80%) of the reimbursable expenses incurred in the same fiscal year.

11. Article XII, Section 12.02 Distribution on Termination: DELETE reference to “Section 8.01” and REPLACE with reference to “Section 9.01.”
12. First Amendment to Upland Metrolink Station Cooperative Agreement, Exhibit B Upland Metrolink Station Level of Security and Maintenance Service, Security: DELETE each instance of “fifteen minutes” and REPLACE each with “thirty (30) minutes.”

[Signatures on the following page.]

IN WITNESS WHEREOF, the authorized PARTIES have signed below;

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: 

Name: Art Bishop
Title: Board President

Date: 8-10-2022

CITY OF UPLAND

By: 

Name: Michael Blay
Title: City Manager

Date: 7-26-22

APPROVED AS TO FORM

By: 

Julianna K. Tillquist
SBCTA General Counsel

Date: 8/4/2022

APPROVED AS TO FORM

By: 

Stephen P. Deitsch
City Attorney

Date: 7/25/22